

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 5618 of 1988
WITH
SPECIAL CIVIL APPLICATIONS No 6876 of 1988
TO
SPECIAL CIVIL APPLICATION No 6890 of 1988
AND
SPECIAL CIVIL APPLICATION No 7064 of 1988
AND
SPECIAL CIVIL APPLICATION No 1496 of 1989

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgments?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgment?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

THAKORBHAI I PATEL & ORS.
Versus
STATE OF GUJARAT

Appearance:

MR PJ VYAS & MR GR SHAIKH for Petitioners
MR MR ANAND WITH MR SAMIR DAVE for Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of decision: 03-03-97.

C.A.V. JUDGMENT

1. As the facts and grounds of challenge to the

impugned orders in all these Special Civil Applications are common and on the request of the counsel for the parties, these petitions are being decided by this common order.

2. The main arguments have been advanced by Shri P.J. Vyas in this case and he has given out the facts and grounds from the Special Civil Application No.5618/88. So for the purpose of deciding all these Special Civil Applications, the facts and grounds are being taken from the aforesaid Special Civil Application.

3. The facts of the case, in brief, are that the respondent No.4 purchased on 26th September, 1983, the property No.1798 (village site) situated in village Sanjali from Respondent no.3 and sold the same to the petitioner on 5-2-1985. Both the sale deeds were effected under a registered sale deed. The petitioner made an application on 15-2-1985 to the Panchayat for grant of permission for construction of a residential house on the site. The Panchayat vide its resolution No.7(8) passed in its meeting held on 25-2-1985 granted permission to the petitioner for construction of the residential house on the village site. After grant of the permission, the petitioner has constructed house and is residing with the members of his family since 1985-86. The petitioner has paid the house tax Rs.15/for the year 1985-86 to the Panchayat. He has further paid the house tax Rs.15/- for the year 1986-87 to the Panchayat. The respondent no.2 issued notice dated 29-9-1986 to the petitioner and the respondent nos.3 and 4 stating that the lands stated in the schedule to the notice is unauthorisedly in possession of the petitioner, as the same is of restricted tenure under the provisions of Sec.73-A, 73-AA of the Bombay Land Revenue Code, 1879, and the same is transferred without prior permission of the Collector. The parties were called upon to show cause why the transfer be not cancelled under sec.73-AA (4) of the Code and why summary eviction be not passed and also why the lands should not be forfeited to the Government free from all encumbrances. The Deputy Collector, Rajpipla, vide his order dated 31st December, 1986, declared the transfer of the property No.179, in favour of the petitioner, illegal under the provisions of Sec.73-AA(3)(4) of the Code and ordered for forfeiture of the said land free from all encumbrances. However, the respondent no.2 did not imposed any fine, penalty as contemplated by sec. 73-AA(7) of the Code on the ground that no entry is made in the revenue record regarding the provisions of

sec.73-AA, and as such, the transfer is effected in ignorance. The respondent no.2 further directed the Deputy Mamlatdar concerned, to take the possession after the expiry of the period for filing appeal and to report with 'Kabja-rashid'. Aggrieved of the order of the Deputy Collector, Rajpipla, dated 31st December, 1986, the petitioner filed an appeal No.85/87 before the Collector, Broach, who by his order dated 27-5-1987 rejected the same and confirmed the order of the respondent no.2. The Collector held that the agricultural and non-agricultural lands are restricted under the provisions of sec.73AA, such lands cannot be transferred without permission of the competent authority. The petitioner filed revision being revision No.40 of 1987 before the respondent no.1 under sec.211 of the Code inter-alia, contending, (1) that there is no notification issued by the Government, (2) that the provisions are not applicable to village site lands, (3) that they are applicable to the agricultural and not to the non-agricultural land, as held by Collector, (4) that there is no entry in the revenue record about the restricted tenure, (5) that the transfer is bonafide, (6) that under sec.73B the transfer be approved or sanctioned by charging premium, (7) that the transfer be regularised by charging occupancy price as the house is constructed on the land, and (8) that the transferor is not exploited. The respondent no.1 vide its order dated 7-5-1988 rejected the revision application and confirmed the orders of both the respondents no.2 and 3. The respondent no.1 has held that the petitioner can certainly request the Collector for grant of the land as and when it is proposed to be disposed of. Hence, this Special Civil Application.

4. None of the respondents have filed reply to this Special Civil Application.

5. Shri P.J. Vyas, the learned counsel for the petitioners, contended that the respondent no.1 has committed serious error of law in holding that the provisions of sec.73AA of the Code are applicable on the village site lands. It has next been contended that all the three authorities have not considered the fact that it is not the case of any exploitation by the petitioner to the weaker class and there is no entry, in the revenue record, made about the restricted tenure, and as such, it was a bonafide transfer for value without notice. In such circumstances, all the three authorities have committed serious error in taking the harsh action against the petitioners. All the three authorities have not considered that the transfer was

capable of regularisation in the facts and circumstances. It has further been contended that the respondents have acted contrary to the provisions of sec.73B of the Code. Nothing has been brought on the record by the respondents, on what terms and conditions the land was given to the respondent no.3. Even inquiry as to whether the occupancy is an inheritable or transferable property or not was not made and the matter has been decided against the petitioner. It is urged that the respondent has not produced on record any material to show that any notification is published by the State Government declaring the provisions of sec.73A of the Code applicable in any tract or village and in particular village Sanjali and that after the date of such notification occupancy is not transferable without the previous sanction of the Collector. Shri Vyas further contended that the Collector could have exercised its power suo motu under sec.73AA of the Code, 1879, within reasonable time. In the case in hand, the Collector has suo motu exercised the powers under the aforesaid section after more than three years in most of the cases though in few cases, the power has been exercised within one year or more. Though the limitation has not been prescribed, but the power has to be exercised within reasonable time. Lastly, the counsel for the petitioner contended that assuming everything against the petitioners, even then, having regard to the facts of the case, namely, no entry in revenue record, permission to build house was granted by Panchayat, no exploitation of the respondent no.3, and lapse of time, the respondent no.1 ought to have directed the Collector to grant post-facto permission by charging occupancy price or requiring to pay premium under sec.73B of the Code. The Collector has not imposed any penalty as he found the transfer to be bonafide for value without notice.

6. On the other hand, the counsel for the respondents supported the orders passed by the authorities below.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Before dealing with the contentions raised by the learned counsel for the parties, I consider it to be appropriate to refer the relevant provisions of the Code, 1879, which are as follows:

73A. Power to restrict right of transfer -

(1) Notwithstanding anything in the foregoing

section, in any tract or village to which the State Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, occupancies shall not after the date of such notification be transferable without the previous sanction of the Collector.

(2) The State Government may, by notification in the Official Gazette, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this sanction.

73AA. Restriction on transfer of occupancies of tribals to tribals or non-tribals -

(1) Notwithstanding anything contained in section 73, an occupancy of a person belonging to any of the Scheduled Tribes (hereinafter in this section and in section 73AB referred to as "the tribal") shall not be transferred to any person without the previous sanction of the Collector.

(2) The previous sanction of the Collector under sub-section (1) may be given in such circumstances and subject to such conditions as may be prescribed.

(3) (a) Where tribal transfers the possession of his occupancy to another tribal in contravention of sub-section (1), the tribal transferor or his successor in interest may, within two years of such transfer, apply to the Collector that the possession of such occupancy may be restored to him and thereupon the Collector shall, after issuing a notice to the transferee or his successor in interest, as the case may be, in the prescribe form to show cause why he should not be disentitled to retain possession of the occupancy and after holding such inquiry as he deems fit, declare that the transferee or his successor in interest shall not be entitled to retain possession of the occupancy and that the occupancy shall be restored to the tribal transferor or his successor in interest, as the case may be, on the same terms and conditions on which the transferor held it immediately before the transfer and subject to his acceptance of the liability for payment of arrears of land revenue in respect of such occupancy in accordance with the rules made by the State Government and that the transferee or his successor in interest, as the case may be, shall be deemed to be unauthorisedly occupying the occupancy :

Provided that such declaration shall stand revoked if the tribal transferor, or as the case may be, his successor in interest fails or refuses in writing to accept the restoration of the possession of such occupancy within the prescribed period,

(b) Where -

(i) a tribal in contravention of sub-section (1) of section 73A or of any other law for the time being in force has transferred his occupancy to another tribal at any time during the period commencing on the 4th April, 1961 and ending on the day immediately before the date of commencement of the Bombay Land Revenue (Gujarat Second Amendment) Act, 1980 (Guj. 37 of 1980), and

(ii) the tribal transferee or his successor in interest has not been evicted from such occupancy under section 79A.

the transfer of occupancy shall be valid, as if it were made with the previous sanction of the Collector under section 73A.

(4) Where a tribal -

(a) in contravention of sub-section (1) of this section, or of sub-section (1) of section 73A, or of any other law for the time being in force, transfers his occupancy to any person other than a tribal (hereinafter in this section and in section 73AB referred to as "the non-tribal") at any time on or after the date of commencement of the Bombay Land Revenue (Gujarat Second Amendment) Act, 1980, (Guj.37 of 1980) (hereinafter in this section referred to as "the said date"); or

(b) in contravention of sub-section (1) of section 73A or of any other law for the time being in force has transferred his occupancy to a non-tribal at any time before the said date.

The Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time, or on an application made by the tribal transferor or his successor in interest at any time within three years from the said date or the date of such transfer, whichever is later, after issuing a notice to the transferee or his successors in interest, as the case may be, to show cause why the transfer should not be declared void and after making such inquiry as he thinks fit, declare the transfer of such

occupancy to be void and thereupon the occupancy together with the standing crops thereon, if any, shall vest in the State Government free from all encumbrances.

(5) Where an occupancy is vested in the State Government under sub-section (4) and such occupancy was assessed or held for the purposes of agriculture immediately before its transfer by the tribal transferor, the Collector shall, after taking necessary action under sections 79A and 202, give notice to the tribal transferor or his successor in interest, as the case may be, requiring him to state in writing within ninety days from the date of receipt of such notice whether he is willing to purchase the occupancy and cultivate it personally, and if such tribal transferor or his successor in interest agrees to purchase the occupancy and undertakes to cultivate it personally, it may be granted to him on payment of the prescribed occupancy price.

(6) If within the said period of ninety days the transferor or his successor in interest does not intimate his willingness to purchase the occupancy and to cultivate it personally, or fails to pay the occupancy price within such period as may be specified by the Collector, the occupancy, shall be granted to any other tribal residing in the same village or in any village situated within such distance from the village as may be prescribed, on the same conditions, including the payment of the occupancy price, as are specified in sub-section (5), and if he is not so willing, it shall be granted to other classes of persons in such order of priority, at such occupancy price and subject to such conditions as may be prescribed.

(7) Where any occupancy is transferred to a non-tribal in contravention of sub-section (1), such non-tribal shall, without prejudice to any other liability to which he may be subject, be liable to pay to the State Government, a penalty not exceeding three times the value of the occupancy, such penalty and value to be determined by the Collector, and such determination shall be final :

Provided that before levying any such penalty, the non-tribal shall be given a reasonable opportunity of being heard.

(8) The penalty payable under sub-section (7) shall, if it is not paid within the time specified by the Collector, be recoverable as an arrear of land

revenue.

73AD. Restriction on registration of documents -

(1) Notwithstanding anything contained in the Registration Act, 1908, (16 of 1908).

(a) no document relating to transfer (not being a mortgage or creation of charge falling under section 73AB) of an occupancy of a person belonging to any of the Schedule Tribes shall be registered on or after the date of the commencement of the Bombay Land Revenue (Gujarat Second Amendment) Act, 1980 (Guj.37 of 1980) (hereinafter in this section referred to as "the said date") by any registering officer appointed under the Registration Act, 1908 (16 of 1908), unless the person presenting the document furnishes a declaration by the transferor in the prescribed form which shall be subject to verification in the prescribed manner, that the transfer of occupancy is made with the previous sanction of the Collector under section 73A or section 73AA;

(b) a document relating to the transfer of an occupancy belonging to any of the Scheduled Tribes, referred to in clause (a) which is registered on or after the said date shall take effect and operate only from the time of such registration.

(2) Nothing in sub-section (1) shall apply to the documents of transfers of occupancies of persons belonging to any of the Scheduled Tribes made before the said date, but presented for registration after the said date.

73B. Payment of premium for sanctioning transfer or partition of occupancy. -

Where any occupancy by virtue of any conditions annexed to the tenure by or under this Act, is not transferable or partible without the previous sanction of the State Government, the Collector or any other officer authorised by the State Government, such sanction shall not be given except on payment to the State Government of such sum as the State Government may by general or special order determine.

8. It is not in dispute that the land in question owned and possessed by the tribal is a village site. The counsel for the parties are in agreement that village site lands are meant for the construction of the

houses for residential purposes. It is also not in dispute between the parties that the lands in dispute, in all these Special Civil Applications, are of the area not exceeding in any case 90 sq.mts.. So it was a small piece of village site land which was in occupancy of the tribal for raising of the construction. The tribal has sold the land firstly to the respondent No.4 and then from respondent No.4, the petitioner has purchased the land. It is also not in dispute that both the first and second sale were made under the registered documents. The construction on the land has been raised by the petitioner after taking the prior sanction for the same from the Gram Panchayat. The Gram Panchayat collected the tax from the petitioner for the years 1985-86 and 1986-87. Further there is no dispute that under sub-section (7) of Section 73AA of the Code, 1879, no penalty has been imposed on the non-tribal for the contravention of the said provisions on the ground that it was taken to be a bonafide transfer. The document of the confirmation of the occupancy right in the land to the tribal was not brought on record by the respondents. In the revenue record, it was not notified that the village site land in the occupancy of the tribal was non-alienable and non-transferrable.

9. The contravention of the provisions of sec.73AA of the Code, 1879 has been made in all these Special Civil Applications. The land in dispute (village site land) was non-alienable and non-transferable as it belongs to the tribal, without previous sanction of the Collector. The petitioners are not the rich persons or the men of means. They are the persons who bonafidely purchased these lands to have a shelter by raising constructions thereon, but still the bonafide transfers of the occupancy of the tribal to the non-tribal are not protected. However, the transfer of the occupancy rights of the tribal is permissible with the previous sanction of the Collector. I do not consider it to be appropriate to go on this larger issue - whether the transfers made in contravention of the provisions of sec.73AA of the Code, 1879, without previous sanction of the Collector by a tribal to non-tribal or tribal to tribal are void-ab-initio or voidable, but the law permits such a transfer with the previous sanction of the Collector and subject to payment of premium as provided under sec.73B of the Code, 1879. However, the previous sanction of the Collector for the transfer of occupancy of the tribal to non-tribal is sine-qua-non to be a valid transfer. Under sec.73B of the Code, 1879, the previous sanction for transfer or partible of the occupancy of the tribal to non-tribal shall not be given

except on payment to the State Government of such sum as the State Government may by general or special order determine. Though the counsel for the petitioner has strongly pressed the point that the provisions of sec.73AA of the Code, 1879, are not applicable to the transfer of the village site land, but he failed to point out any provision from the Code, 1879, where such land has been excluded from the clutches of the provisions of sec.73AA.

10. Having glance to the relevant provisions of the Code, 1879, as reproduced above and after going through the orders made by both the authorities, I do not find any illegality in the orders impugned in these Special Civil Applications. The transfer of occupancy rights of the tribal has been made in contravention of provisions of sec.73AA of the Code, 1879, and in case, the orders impugned in these Special Civil Applications are set aside then what this Court will do, to restore the illegal transfers which this Court will not normally do. It is a settled law that the issue of a writ of certiorari will be refused by this Court sitting under Article 226 of the Constitution where the effect of quashing the impugned order would be to restore the illegal order. Reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of Venkateswara Rao vs. Govt. of Andhra Pradesh reported in AIR 1966 SC 828, to the decision of Rajasthan High Court in the case of Jagan Singh vs. S.T.A. Tribunal reported in AIR 1980 (RAJ) 1, to the decision of the Kerala High Court in the case of A.M. Mani vs. State Electricity Board reported in AIR 1968 (KERALA) 76 and to two decisions of the Patna High Court in the case of Devendra Prasad vs. State of Bihar reported in AIR 1977 (PATNA) 166 and in the case of Chintamani Sharan Nath Sahadeo vs. State of Bihar reported in AIR 1990 (PATNA) 165.

11. The Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad, while dealing with the appeal of the petitioner has observed that the petitioner can certainly request the Collector for grant of land as and when the same is proposed to be disposed of. The original authority, the Collector has not imposed any penalty on the petitioner for contravention of the provisions of sec.73AA of the Code, 1879, as stated earlier, for the reason that it was taken to be a bonafide transfer and the appellate authority made this observation certainly keeping in view that it is a case where the petitioner has not committed any fraud and further that he has not exploited in any way and manner,

the tribal. The land in dispute is ordered to be vested in the State Government free from all encumbrances.

12. Section 62 of the Code, 1879, provides that it shall be lawful for the Collector to require the payment of a price for unalienated land or to sell the same by auction, and to annex such conditions to the grant as he may deem fit, before permission to occupy is given under sec.60.

13. Section 60 of the Code, 1879, provides that any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation obtain the permission in writing of the Mamlatdar or Mahalkari.

14. Section 62 read with sec.60 of the Code, 1879, empowers the Collector to grant the unalienated land on payment of price. Though the Additional Chief Secretary, Revenue Department (Appeals) has given the liberty to the petitioner to make a request to the Collector for grant of the land as and when it is proposed to be disposed of, but before that stage arises, the petitioner is likely to be dispossessed from the land. Though the counsel for the petitioners contended that these transfers were capable of regularisation, but he failed to make reference to any of the provisions of the Code, 1879, which permits the regularisation of the transfer of the occupancy of a tribal to non-tribal in contravention of Sec.73AA of the Code, 1879.

15. I do not find any illegality in the finding of the appellate authority that sec.73AA does not envisage regularisation of the transaction. Similarly, sec.73B of the Code, 1879, nowhere provides for the regularisation of the transfer of the occupancy right of the land in dispute of a tribal to non-tribal. This section makes a provision regarding giving sanction for the transfer of occupancy right in the land of tribal to non-tribal subject to payment of such sum as the State Government may by general or special order determine. This provision relates to at the stage earlier to the transfer, but it does not provides for regularisation of the transfer made in contravention of sec.73AA of the Code, 1879.

16. The transfer of the occupancy right of a tribal to non-tribal, the petitioner herein, has been made in contravention of the provisions of sec.73AA of the Code, 1879, and the Code 1879 nowhere makes a provision for

regularisation of such an illegal transfer. Moreover, under sec.73AA of the Code, 1879, this transfers were declared to be void. Further the order has been made for vesting of the land in the State Government free from all encumbrances. It is true that the notification was not published nor it has been indicated in the revenue record that the land in dispute was non-alienable and non-transferable. The provisions of sec.73A and 73AA of the Code, 1879, are meant for the protection of the weaker class of Society and the petitioner cannot be allowed to take the benefit of the same. However, this fact have relevancy while dealing with the question of imposing of the penalty for contravention of the aforesaid sections and it has been taken care of and the penalty has not been imposed in the present case upon the petitioner.

17. Section 73AA of the Code, 1879, nowhere makes a distinction in the transfer of occupancy right of a tribal to non-tribal on the ground that it is a bonafide transaction. This provision prohibits the transfer of the occupancy right of a tribal to a non-tribal and this position is not in dispute. Though it is a hard case and the petitioner has purchased this land in good faith, but the occupancy right has been transferred in contravention of the provisions of sec.73AA of the Code, 1879, and as such, if these transfers are ordered to be regularised by this Court then this order will be in contravention of the said provision. This Court will not pass an order sitting under Article 226 of the Constitution of India which contravenes any of the statutory provisions. Otherwise also, only as it is a hard case, this Court will not lay down a bad law.

18. However, in view of the fact that the land has been purchased by the petitioner in good faith, they were not aware of the provisions of law, they raised construction on the land of residential houses after taking prior permission of the Gram Panchayat, they have spent considerable amount in raising construction on the land and the purchase of the land, and in case, the land is taken back from them they will be put to enormous loss, I consider it to be in the interest of justice that the Collector may consider the question of the grant of land on payment of price to the petitioners expeditiously. This land vests in the State Government free from all encumbrances and the provisions of sec.60 read with sec.62 of the Code, 1879, empowers the Collector to grant this land on payment of price and subject to such conditions as may be deemed fit and proper. While dealing with the question of grant of

land to the petitioners under sec.62 of the Code, 1879, the Collector shall keep in mind the observations aforesaid made by this Court. The Collector will further take a sympathetic view in the matter looking to the fact that the officers of the State are equally responsible for the contravention of the provisions of sec.73AA of the Code, 1879.

19. Before parting with the judgment, I am constrained to make certain observations which I feel necessary to make as in the State of Gujarat, its Officers are not taking care to see that the benevolent provisions of the Code, 1879 are not being infringed or violated. In the present case, the tribal has sold the land firstly, to the respondent No.4 by a registered sale deed undisputedly and then the respondent No.4 sold the land to the petitioner by registered document. The documents of sale of the land are being registered by a Government officer. At the time of registration of the documents of sale of the occupancy of a tribal to non-tribal or may be to a tribal, it was statutory obligation casted upon the registering authority of the document to ensure that the prior sanction of the Collector has been taken for such a transfer. The Code, 1879, has a very specific provision in this respect, as contained in sec.73AD. This provision put a restriction on the registration of the document and the registering officer appointed under the Registration Act, 1908, could not have registered the document unless the person presenting the document furnishes a declaration that the transfer of occupancy is made with the previous sanction of the Collector under sec.73A or sec.73AA of the Code, 1879. The registering officer appointed under the Registration Act, 1908, is a Government officer and he has not cared to see whether the requirement of statutory provision, sec.73AD of the Code, 1879 is fulfilled or not. Why this provision has been made by the legislature, and the reply is very obvious, to put a check on these transfers or scrutiny on these transfers by the officer appointed under the Registration Act, 1908. It is unfortunate that there is no accountability of the said officers for their inaction or omissions and that is the reason that they are not afraid of acting contrary to the statutory provisions. The petitioner a bonafide purchaser of the land with due consideration and without there being any exploitation of the tribal, has been put to task to the extent, first that the sale has been declared to be void under sec.73AA of the Code, 1879, and further the land was ordered to be vested in the State Government free from all encumbrances. But what the State Government did with the officer, the

registering officer appointed under the Registration Act, 1908, who has not taken care to see that the occupancy was not transferable. Many things are being said by the public against these registering officers appointed under the Registration Act, 1908, and from the facts of the present case, this Court is compelled to draw an inference that the officer has not discharged his duties, casted upon him under the statutory provision, for the obvious reason i.e. may be for his gains. That is not the end of the matter. But next comes the action of the Gram Panchayat who instead of making the complaint to the appropriate authority of the transfer of the land in contravention of the provisions of sec.73AA of the Code, 1879, has granted the permission for construction of the house to the petitioner. It has further realised tax from the petitioner. Then comes the action of the Collector, who has also not cared to take the notice of this transaction for a considerable long time. Though the counsel for the petitioners has placed much emphasis on the question that there is a delay in taking the action, but this point was not raised by the petitioner before the appellate authority and I do not consider it to be appropriate to permit this new point to be raised before this Court under Article 226 of the Constitution. But these are glaring facts on which no notice has been taken by the State Government. The matter has come up before the appellate authority who was the Additional Chief Secretary of the Department and he should not have felt satisfied by passing the order adversely affecting the petitioner. The sale was made in contravention of provisions of sec.73AA of the Code, 1879, and the appellate authority was justified to confirm the order of the Collector. At the same time, being an officer of the rank of the Additional Chief Secretary, he should have reported for the action to be taken against the registering officer appointed under the Registration Act, 1908, as well as to take the action against the Gram Panchayat who granted the sanction for construction of the house. He should have also taken care to see that the necessary action is taken against the Collector also, for taking the action at such a late stage. In such matters, immediate action should be taken so that the bonafide purchasers of the land, like the petitioner in the present case, may not be put to suffer enormous loss. The petitioner has rightly acted and proceeded in the matter, as no objection has been raised by the registering authority, Gram Panchayat granted the permission for construction, and the Collector has also not taken action for years together for declaration of the sale deed to be void, under sec.73AA of the Code,

1879. Unless the accountability are being there of the officers and the authorities who are equally responsible for the contravention of the provisions by their act and omissions, there will not be any check on contraventions of the provisions of the benevolent Act. The officers, as there is no accountability, feel safe and they do not hesitate not to take any action in the matter where there is apparent contraventions of the provisions of the Code, 1879 in the transfer of the land of the tribal to a non-tribal or tribal. I do not consider it appropriate to give any such direction in the present case against those defaulting officers, but there must be some check and balance in such matters at the grass-root level as well as at the level of the Collector so that at the initial stage, the contravention of the provisions is noticed and the transfer is not permitted. It is the duty of the State Government to see that the registering officer, appointed under the provisions of Registration Act, 1908, strictly adheres to the provisions of sec.73AD of the Code, 1879. It is expected of the State Government to issue necessary circular in this respect with further clarity therein that in case of contravention of provisions of sec.73AD, the officer shall be liable for disciplinary action.

20. In the result, though the orders passed by the Collector and the Additional Chief Secretary, impugned in these Special Civil Applications are maintained, but however the Collector concerned is directed to consider the matter of grant of land to the petitioners sympathetically in the facts and circumstances of the present cases, which have been noticed in this judgment. Till the matter is considered, the petitioners may not be dispossessed from the land in dispute. Rule stands disposed of in all these Special Civil Applications in the aforesaid terms with no order as to costs.

zgs/-